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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,102	10/31/2003	Shuichi Takagi	50T5441.01	2678

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EXAMINER	
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2167	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/699,102	TAKAGI ET AL.	
	Examiner	Art Unit	
	Miranda Le	2167	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 May 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) *15-23* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10/31/2003*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Election was made without traverse of Group I, claims 1-14, filed on 05/09/07 is acknowledge. Group II, claims 15-23, are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected.

Priority

2. The Applicant's claim to domestic priority under 35 U.S.C. §119 (e), as a provisional of application serial number 60/446,929, filed on 02/11/2003, is acknowledged.

Information Disclosure Statement

3. Applicants' Information Disclosure Statement, filed 10/31/2003, has been received, entered into the record, and considered. See attached form PTO-1449.

Specification

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless:
>
> (e) the invention was described in

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-5, 12, 13-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee, Alfred M. et al. (US Pub. No. 20030046383).

Lee anticipated independent claims 1, 14 by the following:

As per claim 1, Lee teaches a method for synchronously transferring an amount of local data *(i.e. data objects, [0031]; an ACK packet, [0032])* from a local data storage medium to a remote data storage medium *(i.e. local and remote memory storage devices, [0016])* via a communications link having an available bandwidth, the local data storage medium associated with a local computer system having a local processor sequentially responsive to a plurality of local computer programs, the remote data storage medium associated with a remote computer system non-redundant of the local computer system and having a remote processor, the method comprising:

evaluating local user conditions *(i.e. evaluation data (or metrics) indicative of the network performance experienced by the client of the server, [0023])* associated with transfer of the local data *(i.e. analyzing the performance of a network, such as the Internet, connecting a server with one or more clients, [0007])*;

based on the available bandwidth *(i.e. be the averaged bandwidth, [0023])* and the amount of local data *(i.e. the amount of data sent, [0023])*, approximating a transfer time for the local data *(i.e. The operation information is then used to generate the values of predefined*

performance evaluation data (or metrics) indicative of the network performance experienced by the client of the server. Some types of communication operation information may, of course, be used directly as the values of selected performance evaluation metrics, [0023]);

based on the approximated transfer time, the local user conditions, and a status of the local processor, selecting *(i.e. the values of selected performance evaluation metrics, [0023])* a time to transmit the local data to the remote data storage medium *(i.e. The operation information may be, for example, the time it takes for sending the requested data over the network and the amount of data sent. The performance metrics, for example, may be the averaged bandwidth and the round-trip time of the data transfer between the server and client, the data loss rate, etc., [0023]);*

automatically arranging transfer of the local data to the remote data storage medium via the communications link at the selected time *(i.e. The operation information may be, for example, the time it takes for sending the requested data over the network and the amount of data sent. The performance metrics, for example, may be the averaged bandwidth and the round-trip time of the data transfer between the server and client, the data loss rate, etc., [0023]).*

As per claim 14, Lee teaches an apparatus for synchronously transferring an amount of local data *(i.e. data objects, [0031]; an ACK packet, [0032])* from a local data storage medium to a remote data storage medium via a communications link having an available bandwidth, the local data storage medium associated with a local computer system having a local processor sequentially responsive to a plurality of local computer programs, the remote data storage

medium associated with a remote computer system non-redundant of the local computer system and having a remote processor, the apparatus comprising:

a computer-readable storage medium *(i.e. including a processing unit 21, a system memory 22, and a system bus 23 that couples various system components including the system memory to the processing unit 21, [0017]);* and

a processor responsive to the computer-readable storage medium and to a computer program, the computer program, when loaded into the processor *(i.e. program modules may be located in both local and remote memory storage devices, [0016])*, operative to perform a method comprising:

evaluating local user conditions *(i.e. evaluation data (or metrics) indicative of the network performance experienced by the client of the server, [0023])* associated with transfer of the local data *(i.e. analyzing the performance of a network, such as the Internet, connecting a server with one or more clients, [0007])*;

based on the available bandwidth *(i.e. be the averaged bandwidth, [0023])* and the amount of local data *(i.e. the amount of data sent, [0023])*, approximating a transfer time for the local data *(i.e. The operation information is then used to generate the values of predefined performance evaluation data (or metrics) indicative of the network performance experienced by the client of the server. Some types of communication operation information may, of course, be used directly as the values of selected performance evaluation metrics, [0023]);*

based on the approximated transfer time, the local user conditions, and a status of the local processor, selecting *(i.e. the values of selected performance evaluation metrics, [0023])* a time to transmit the local data to the remote data storage medium *(i.e. The operation information*

may be, for example, the time it takes for sending the requested data over the network and the amount of data sent. The performance metrics, for example, may be the averaged bandwidth and the round-trip time of the data transfer between the server and client, the data loss rate, etc., [0023]);

automatically arranging transfer of the local data to the remote data storage medium via the communications link at the selected time *(i.e. The operation information may be, for example, the time it takes for sending the requested data over the network and the amount of data sent. The performance metrics, for example, may be the averaged bandwidth and the round-trip time of the data transfer between the server and client, the data loss rate, etc., [0023]).*

Claim 2 is computer-readable medium encoded with a computer program which, when loaded into a processor, implements the method of claim 1, therefore is rejected under similar rational as provided in claim 1.

As per claim 3, Lee teaches the computer-readable medium according to claim 2, wherein the computer program comprises one of the plurality of local computer programs, and the processor comprises the local processor *(i.e. program modules may be located in both local and remote memory storage devices, [0016]).*

As per claim 4, Lee teaches the computer-readable medium according to claim 2, wherein the processor comprises the remote processor *(i.e. including a processing unit 21, a*

system memory 22, and a system bus 23 that couples various system components including the system memory to the processing unit 21, [0017]).

As per claim 5, Lee teaches the method according to claim 1, further comprising: automatically transmitting the local data to the remote data storage medium at the selected time *(i.e. The operation information may be, for example, the time it takes for sending the requested data over the network and the amount of data sent. The performance metrics, for example, may be the averaged bandwidth and the round-trip time of the data transfer between the server and client, the data loss rate, etc., [0023]).*

As per claim 12, Lee teaches the method according to claim 1, wherein the local user conditions comprise one of: a location of the local data; a preferred transfer time; a file extension associated with the local data; and a status of the communication link *(i.e. The operation information may be, for example, the time it takes for sending the requested data over the network and the amount of data sent. The performance metrics, for example, may be the averaged bandwidth and the round-trip time of the data transfer between the server and client, the data loss rate, etc., [0023]).*

As per claim 13, Lee teaches the method according to claim 1, wherein the remote processor and the local processor are under independent control *(i.e. program modules may be located in both local and remote memory storage devices, [0016]).*

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee, Alfred M. et al. (US Pub. No. 20030046383), in view of Weaver et al. (US Patent No. 7,068,769).

As per claim 6, Lee does not specifically teach automatically arranging for interruption of transfer of the local data based on the status of the local processor.

However, Weaver teaches the limitation *(i.e. when a user does not interact with the input mechanism for the set period of time, the screen-saver application might generate a "not present" message and cause the station to send the message via the network 24 to the presence server 20 (col. 8, lines 45-59).*

It would have been obvious to one of ordinary skill of the art having the teaching of Lee and Weaver at the time the invention was made to modify the system of Lee to include automatically arranging for interruption of transfer of the local data based on the status of the local processor as taught by Weaver.

One of ordinary skill in the art would be motivated to make this combination in order to generate a "not present" message and cause the station to send the message via the network to the presence server in view of Weaver *(col. 8, lines 45-59),* as doing so would give the added benefit of managing communications, based on the physical presence of one or more users at one or more communication stations as taught by Weaver *(Summary).*

As per claim 7, Weaver teaches the method according to claim 6, further comprising: automatically interrupting transfer of the local data based on the status of the local processor *(i.e. when a user does not interact with the input mechanism for the set period of time, the screen-saver application might generate a "not present" message and cause the station to send the message via the network 24 to the presence server 20 (col. 8, lines 45-59).*

As per claim 8, Weaver teaches the method according to claim 6, wherein the status of the local processor is inferred from one of: a status of a display device; a status of a memory; a configured processor utilization; and a time since a last interactive use of the local computer system *,(i.e. when a user does not interact with the input mechanism for the set period of time, the screen-saver application might generate a "not present" message and cause the station to send the message via the network 24 to the presence server 20 (col. 8, lines 45-59).*

As per claim 9, Weaver teaches the method according to claim 8, wherein the status of the display device comprises activation of a screen-saver *(i.e. The screen-saver application might then validate the username and password and responsively conclude that the user is properly*

identified by the username, col. 9, lines 10-20).

As per claim 10, Weaver teaches the method according to claim 6, further comprising: after automatically arranging for interruption of transfer of the local data, automatically arranging for resumption of transfer of the local data based on the status of the local processor *(i.e. The screen-saver application might then validate the username and password and responsively conclude that the user is properly identified by the username, col. 9, lines 10-20).*

As per claim 11, Weaver teaches the method according to claim 10, further comprising: automatically resuming transfer of the local data based on the status of the local processor *(i.e. The screen-saver application might then validate the username and password and responsively conclude that the user is properly identified by the username, col. 9, lines 10-20).*

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Miranda Le whose telephone number is (571) 272-4112. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R. Cottingham, can be reached on (571) 272-7079. The fax number to this Art Unit is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Miranda Le
July 16, 2007